

13503 PLM-II



**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-195657

DATE: April 22, 1980

MATTER OF: Roy A. Conklin

**DIGEST:** Employee of Department of the Air Force appealed action of Claims Division which disallowed his claim for a retroactive salary adjustment following a reduction in force. Record shows agency followed proper reduction-in-force procedures. Subsequent action by Air Force permitting upward reclassification of position to which employee was downgraded created no entitlement to backpay, as classification actions are prospective in effect. Testan v. United States, 424 U.S. 392 (1976). Action of Claims Division is sustained.

By a letter dated July 5, 1979, Mr. Roy A. Conklin, appealed Certificate of Settlement Z-1689844, issued January 18, 1979, which disallowed his [claim for a retroactive salary adjustment and backpay]. Mr. Conklin is an employee of the Department of the Air Force whose duty station is Robins Air Force Base, Georgia. ~~120~~ 35

The record shows that on March 31, 1972, Mr. Conklin, then a GS-393-11, Communications Specialist, at Lajes Field, Azores, received a reduction-in-force notice which offered him the position of Air Traffic Control Specialist, GS-2151-10. On April 6, 1972, he indicated that he would accept the GS-10 position. On May 2, 1972, he signed an overseas tour renewal agreement. On May 18, 1972, the original reduction-in-force notice was withdrawn and a second notice was issued which offered him the position of Aircraft Dispatcher, GS-2151-6. On July 18, 1972, Mr. Conklin was reduced to grade GS-6. In August he performed his tour renewal travel.

In March 1974 Mr. Conklin's position was reclassified as Aircraft Dispatcher, GS-2151-7. Mr. Conklin

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appealed this action to the Civil Service Commission (CSC) requesting a higher grade. The appeal was denied by a letter dated July 24, 1974. On August 19, 1974, Mr. Conklin appealed his classification to the Department of the Air Force. He was advised on September 3, 1974, that the CSC decision was binding on the Air Force. Effective February 11, 1974, upon his transfer from Lajes Field to Robins Air Force Base, Georgia, Mr. Conklin was promoted to GS-2152-09.

On March 26, 1976, the Department of the Air Force, DPCMM, determined that the Aircraft Dispatcher position, GS-2151-7, could be classified where conditions warranted as Airfield Management Technician, GS-2101-9, on the basis of locally developed position descriptions. The position of Aircraft Dispatcher had previously been standardized in the Air Force. In response to this action Mr. Conklin filed a claim on October 17, 1977, with our Claims Division for an adjustment in his base pay from July 1972, until February 10, 1975. The claim was denied on the basis that there was no evidence of an improper or erroneous personnel action which resulted in a reduction in Mr. Conklin's pay--a prerequisite for relief under the Back Pay Act, 5 U.S.C. 5596 (1976).

In his appeal Mr. Conklin contends that because he was given 10 days after March 31, 1972, to accept or reject the offer of a GS-10 position, the Government is bound by his acceptance of that offer on April 6, 1972. Thus, he argues that the Air Force's withdrawal of the offer of a GS-10 position was improper. In addition, Mr. Conklin contends that the tour renewal contract, signed on May 2, 1972, before the offer of the GS-10 position was withdrawn, binds the Government to its offer of the GS-10 position. Finally, Mr. Conklin contends that the Air Force's action of March 1976, permitting local classification of the Airfield Management Technician positions at GS-9, constitutes an admission of error by the Air Force with respect to its actions in 1972 which resulted in his reduction in grade.

In order for Mr. Conklin to be entitled to a retroactive salary adjustment and backpay under the Back Pay Act, 5 U.S.C. 5596, and implementing regulations found at Subpart H, part 550, title 5, Code of Federal Regulations, there must be a determination by an appropriate decision making authority that he has undergone an unwarranted or unjustified personnel action resulting in a reduction of pay and/or allowances. Mr. Conklin apparently believes that his reduction in force constitutes such an action and that the classification decision of 1976 constitutes the requisite determination of an unwarranted personnel action.

At the time Mr. Conklin was reduced in grade, reductions in force were governed by Air Force Regulation 40-351, issued January 4, 1972. That regulation required that the Department give an employee 60 days' notice of an impending reduction in force. If the Department amended the reduction-in-force notice to affect a more severe result, the regulation required an additional 60-day notice period (para. 6c). Employees were required to notify the personnel office within a specified time period if they would accept the offer of a lower position (para. 7). These regulations are in accordance with the Civil Service Commission's regulations at 5 C.F.R. Part 351 (1972).

The record indicates the Air Force acted within the scope of its regulations when the reduction in force which affected Mr. Conklin was accomplished. The original notice and offer of a lower position were sent on March 31, 1972. Mr. Conklin acted within the specified time to inform the personnel office that he would accept the GS-10 position. On May 18--during the original 60-day notice period--the agency withdrew the original notice and issued a second notice which offered a position at GS-6 effective July 18, 1972. These actions appear to be in accordance with the applicable regulations, and there is no indication that Mr. Conklin chose to appeal these reduction-in-force actions as he had a right to do under 5 C.F.R. 351.901 (1972).

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With regard to the tour renewal travel, Mr. Conklin and his family traveled in August 1972, which was well after the notice of May 18, 1972, and his acceptance of the GS-6 position. In fact, he had been reduced to grade GS-6 in July 1972 before he and his family performed travel under the tour renewal agreement. Under these circumstances, the fact that he signed the tour renewal agreement while the offer of a GS-10 position was outstanding does not create any entitlement on his part to backpay at that higher grade.

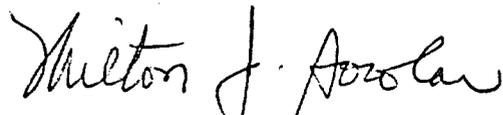
Contrary to Mr. Conklin's suggestion that the Air Force action of 1976 establishes a basis for awarding him backpay retroactive to July 1972, that action, which permitted establishment of local position descriptions of the position to which Mr. Conklin had been downgraded, was prospective only. In general, the determination that a position should be upgraded creates no right to backpay for an employee holding that position until the position is classified at the higher grade and the employee is promoted to it. This is in keeping with the well established rule that an employee is entitled only to the salary of the position to which he is appointed and consistent with the Supreme Court's holding in Testan v. United States, 424 U.S. 392, 407 (1976), that classification actions upgrading positions cannot be made retroactively effective so as to entitle the incumbents to backpay.

The single exception to the general rule that classification actions cannot be effected retroactively is that provided by 5 C.F.R. 511.703 for timely and successful appeals from classification actions downgrading an employee's position. While the record attests to Mr. Conklin's perseverance in attempting to have his position upgraded, he did not file his unsuccessful classification appeal until 1974 when the GS-6 position which he had held since July 1972 was upgraded to a GS-7. Although it appears that the Air

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Force's determination in 1976 to reclassify the position in question to a GS-9 may have been prompted by a grievance in which Mr. Conklin participated, the circumstances under which the position was ultimately upgraded do not fall within the retroactivity provisions of 5 C.F.R. 511.703.

Accordingly, the action of our Claims Division denying Mr. Conklin's request for a retroactive salary adjustment is sustained.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States